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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

LIBERTY MUTUAL INSURANCE
COMPANY, a Massachusetts
Corporation,

Plaintiff,

vs.

THE CALIFORNIA AUTOMOBILE
ASSIGNED RISK PLAN, a program
established under California Insurance
Code section 11620 et seq., and DOES 1
through 20, inclusive,

Defendants.

THE CALIFORNIA AUTOMOBILE
ASSIGNED RISK PLAN,

Counter-Claimant,

vs.

LIBERTY MUTUAL INSURANCE
COMPANY, a Massachusetts Corporation,

Counter-Defendant

Case No. C-11-1419 MMC

STIPULATED PROTECTIVE ORDER

Case No. C-11-1419 MMC

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STIPULATED PROTECTIVE ORDER

1
2 1. PURPOSES AND LIMITATIONS

3 Disclosure and discovery activity in this action are likely to involve production of
4 confidential, proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may be
6 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
7 following Stipulated Protective Order. The parties acknowledge that this Order does not confer
8 blanket protections on all disclosures or responses to discovery and that the protection it affords
9 from public disclosure and use extends only to the limited information or items that are entitled
10 to confidential treatment under the applicable legal principles. The parties further
11 acknowledge, as set forth in Section 12.3 below, that this Stipulated Protective Order does not
12 entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the
13 procedures that must be followed and the standards that will be applied when a party seeks
14 permission from the court to file material under seal.

15 2. DEFINITIONS

16 2.1 Challenging Party: A Party or Non-Party that challenges the designation of
17 information or items under this Order.

18 2.2 "CONFIDENTIAL" Information or Items: Information (regardless of how it is
19 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
20 of Civil Procedure 26(c).

21 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
22 well as their support staff).

23 2.4 Designating Party: A Party or Non-Party that designates information or items that
24 it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

25 2.5 Disclosure or Discovery Material: All items or information, regardless of the
26 medium or manner in which it is generated, stored, or maintained (including, among other things,
27 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
28 responses to discovery in this matter.

1 2.6 Expert: A person with specialized knowledge or experience in a matter pertinent
2 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as
3 a consultant in this action.

4 2.7 House Counsel: Attorneys who are employees of a party to this action, and in
5 addition for CAARP, attorneys who are employees of AIPSO. House Counsel does not include
6 Outside Counsel of Record or any other outside counsel.

7 2.8 Non-Party: Any natural person, partnership, corporation, association, or other
8 legal entity not named as a Party to this action.

9 2.9 Outside Counsel of Record: Attorneys who are not employees of a party to this
10 action but are retained to represent or advise a party to this action and have appeared in this action
11 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

12 2.10 Party: Any party to this action, including all of its officers, directors (and for
13 CAARP, its Advisory Committee members), employees, consultants, retained experts, and
14 Outside Counsel of Record (and their support staffs).

15 2.11 Producing Party: A Party or Non-Party that produces Disclosure or Discovery
16 Material in this action.

17 2.12 Professional Vendors: Persons or entities that provide litigation support services
18 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
19 organizing, storing, or retrieving data in any form or medium) and their employees and
20 subcontractors.

21 2.13 Protected Material: Any Disclosure or Discovery Material that is designated as
22 "CONFIDENTIAL."

23 2.14 Receiving Party: A Party that receives Disclosure or Discovery Material from a
24 Producing Party.

25 3. SCOPE

26 The protections conferred by this Stipulation and Order cover not only Protected
27 Material (as defined above), but also (1) any information copied or extracted from
28 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;

1 and (3) any testimony, conversations, or presentations by Parties or their Counsel that might
2 reveal Protected Material. However, the protections conferred by this Stipulation and Order
3 do not cover the following information: (a) any information that is in the public domain at the
4 time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure
5 to a Receiving Party as a result of publication not involving a violation of this Order, including
6 becoming part of the public record through trial or otherwise; and (b) any information known
7 to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the
8 disclosure from a source who obtained the information lawfully and under no obligation of
9 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed
10 by a separate agreement or order.

11 4. DURATION

12 Even after final disposition of this litigation, the confidentiality obligations imposed by
13 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
14 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of
15 all claims and defenses in this action, with or without prejudice; and (2) final judgment
16 herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews
17 of this action, including the time limits for filing any motions or applications for extension of
18 time pursuant to applicable law.

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection.

21 Each Party or Non-Party that designates information or items for protection under this
22 Order must take care to limit any such designation to specific material that qualifies under the
23 appropriate standards. The Designating Party must designate for protection only those parts
24 of material, documents, items, or oral or written communications that qualify – so that other
25 portions of the material, documents, items, or communications for which protection is not
26 warranted are not swept unjustifiably within the ambit of this Order.

27 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
28 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to

unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions. If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each page that contains protected material. A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the "CONFIDENTIAL" legend to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony.

1 (c) for information produced in some form other than documentary and for any other
2 tangible items, that the Producing Party affix in a prominent place on the exterior of
3 the container or containers in which the information or item is stored the legend
4 "CONFIDENTIAL." If only a portion or portions of the information or item warrant
5 protection, the Producing Party, to the extent practicable, shall identify the protected
6 portion(s).

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
8 designate qualified information or items does not, standing alone, waive the Designating Party's
9 right to secure protection under this Order for such material. Upon timely correction of a
10 designation, the Receiving Party must make reasonable efforts to assure that the material is
11 treated in accordance with the provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
14 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
15 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
16 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
17 challenge a confidentiality designation by electing not to mount a challenge promptly after
18 the original designation is disclosed.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
20 process by providing written notice of each designation it is challenging and describing the basis
21 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
22 notice must recite that the challenge to confidentiality is being made in accordance with this
23 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
24 good faith and must begin the process by conferring directly (in voice to voice dialogue;
25 other forms of communication are not sufficient) within 14 days of the date of service of
26 notice. In conferring, the Challenging Party must explain the basis for its belief that the
27 confidentiality designation was not proper and must give the Designating Party an opportunity
28 to review the designated material, to reconsider the circumstances, and, if no change in

1 designation is offered, to explain the basis for the chosen designation. A Challenging Party
2 may proceed to the next stage of the challenge process only if it has engaged in this meet and
3 confer process first or establishes that the Designating Party is unwilling to participate in the
4 meet and confer process in a timely manner.

5 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
6 intervention, the Designating Party shall file and serve a motion to retain confidentiality
7 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21
8 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
9 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
10 accompanied by a competent declaration affirming that the movant has complied with the meet
11 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party
12 to make such a motion including the required declaration within 21 days (or 14 days, if
13 applicable) shall automatically waive the confidentiality designation for each challenged
14 designation. In addition, the Challenging Party may file a motion challenging a confidentiality
15 designation at any time if there is good cause for doing so, including a challenge to the
16 designation of a deposition transcript or any portions thereof. Any motion brought pursuant
17 to this provision must be accompanied by a competent declaration affirming that the movant
18 has complied with the meet and confer requirements imposed by the preceding paragraph.

19 The burden of persuasion in any such challenge proceeding shall be on the Designating
20 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
21 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
22 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
23 file a motion to retain confidentiality as described above, all parties shall continue to afford the
24 material in question the level of protection to which it is entitled under the Producing Party's
25 designation until the court rules on the challenge.

26 7. ACCESS TO AND USE OF PROTECTED MATERIAL

27 7.1 Basic Principles. A Receiving Party may use Protected Material that is
28 disclosed or produced by another Party or by a Non-Party in connection with this case only

1 for prosecuting, defending, or attempting to settle this litigation. Such Protected Material
2 may be disclosed only to the categories of persons and under the conditions described in
3 this Order. When the litigation has been terminated, a Receiving Party must comply with the
4 provisions of section 13 below (FINAL DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party at a location and
6 in a secure manner that ensures that access is limited to the persons authorized under this Order.

7 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
8 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
9 disclose any information or item designated "CONFIDENTIAL" only to:

10 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
11 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
12 information for this litigation and who have signed the "Acknowledgment and Agreement to
13 Be Bound" that is attached hereto as Exhibit A;

14 (b) the officers, directors, and employees (including House Counsel) of the
15 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
16 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

17 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
18 reasonably necessary for this litigation and who have signed the "Acknowledgment and
19 Agreement to Be Bound" (Exhibit A);

20 (d) the court and its personnel;

21 (e) court reporters and their staff, professional jury or trial consultants, mock
22 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation
23 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

24 (f) during their depositions, witnesses in the action to whom disclosure is
25 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
26 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
27 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
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1 separately bound by the court reporter and may not be disclosed to anyone except as
2 permitted under this Stipulated Protective Order;

3 (g) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information.

5 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
6 LITIGATION

7 If a Party is served with a subpoena or a court order issued in other litigation that
8 compels disclosure of any information or items designated in this action as
9 "CONFIDENTIAL," that Party must:

10 (a) promptly notify in writing the Designating Party. Such notification shall
11 include a copy of the subpoena or court order;

12 (b) promptly notify in writing the party who caused the subpoena or order to issue
13 in the other litigation that some or all of the material covered by the subpoena or order is subject
14 to this Protective Order. Such notification shall include a copy of this Stipulated Protective
15 Order; and

16 (c) cooperate with respect to all reasonable procedures sought to be pursued by
17 the Designating Party whose Protected Material may be affected.

18 If the Designating Party timely seeks a protective order, the Party served with the
19 subpoena or court order shall not produce any information designated in this action as
20 "CONFIDENTIAL" before a determination by the court from which the subpoena or order
21 issued, unless the Party has obtained the Designating Party's permission. The Designating Party
22 shall bear the burden and expense of seeking protection in that court of its confidential material –
23 and nothing in these provisions should be construed as authorizing or encouraging a Receiving
24 Party in this action to disobey a lawful directive from another court.

25 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
26 LITIGATION

27 (a) The terms of this Order are applicable to information produced by a
28 Non-Party in this action and designated as "CONFIDENTIAL." Such information produced by

1 Non-Parties in connection with this litigation is protected by the remedies and relief provided
2 by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from
3 seeking additional protections.

4 (b) In the event that a Party is required, by a valid discovery request, to
5 produce a Non-Party's confidential information in its possession, and the Party is subject to an
6 agreement with the Non-Party not to produce the Non-Party's confidential information, then the
7 Party shall:

- 8 1. promptly notify in writing the Requesting Party and the Non-
9 Party that some or all of the information requested is subject to a
10 confidentiality agreement with a Non-Party;
- 11 2. promptly provide the Non-Party with a copy of the Stipulated
12 Protective Order in this litigation, the relevant discovery request(s), and
13 a reasonably specific description of the information requested; and
- 14 3. make the information requested available for inspection by the
15 Non-Party.

16 (c) If the Non-Party fails to object or seek a protective order from this court
17 within 14 days of receiving the notice and accompanying information, the Receiving Party may
18 produce the Non-Party's confidential information responsive to the discovery request. If the
19 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information
20 in its possession or control that is subject to the confidentiality agreement with the Non-Party
21 before a determination by the court.¹ Absent a court order to the contrary, the Non-Party shall
22 bear the burden and expense of seeking protection in this court of its Protected Material.

23 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
25 Protected Material to any person or in any circumstance not authorized under this Stipulated
26 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating
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28 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality
rights of a Non-Party and to afford the Non-Party an opportunity to protect its
confidentiality interests in this court.

1 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of
2 the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
3 made of all the terms of this Order, and (d) request such person or persons to execute the
4 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
6 PROTECTED MATERIAL

7 When a Producing Party gives notice to Receiving Parties that certain inadvertently
8 produced material is subject to a claim of privilege or other protection, the obligations of the
9 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
10 provision is not intended to modify whatever procedure may be established in an e-discovery
11 order that provides for production without prior privilege review.

12 12. MISCELLANEOUS

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
14 to seek its modification by the court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
16 Order no Party waives any right it otherwise would have to object to disclosing or producing
17 any information or item on any ground not addressed in this Stipulated Protective Order.
18 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
19 material covered by this Protective Order.

20 12.3 Filing Protected Material. Without written permission from the Designating Party
21 or a court order secured after appropriate notice to all interested persons, a Party may not file
22 in the public record in this action any Protected Material. A Party that seeks to file under seal
23 any Protected Material must comply with Civil Local Rule 79-5. Protected Material may
24 only be filed under seal pursuant to a court order authorizing the sealing of the specific
25 Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only
26 upon a request establishing that the Protected Material at issue is privileged, protectable as a
27 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to
28 file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court,

1 then the Receiving Party may file the information in the public record pursuant to Civil Local
2 Rule 79-5(e) unless otherwise instructed by the court.

3 13. FINAL DISPOSITION.

4 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
5 Receiving Party must return all Protected Material to the Producing Party or destroy such
6 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
7 compilations, summaries, and any other format reproducing or capturing any of the Protected
8 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
9 submit a written certification to the Producing Party (and, if not the same person or entity, to
10 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
11 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
12 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other
13 format reproducing or capturing any of the Protected Material. Notwithstanding this provision,
14 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,
15 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
16 reports, attorney work product, and consultant and expert work product, even if such
17 materials contain Protected Material. Any such archival copies that contain or constitute
18 Protected Material remain subject to this Protective Order as set forth in Section 4
19 (DURATION).

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
2

3 Dated: October 27, 2011
4

SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP

5
6 By: 
James R. Carroll

7 Attorneys for Plaintiff
8 LIBERTY MUTUAL INSURANCE
COMPANY

9 Dated: October 27, 2011
10

FARELLA BRAUN & MARTEL LLP

11
12 By: 
Carly O. Alameda

13 Attorneys for Defendant
14 THE CALIFORNIA AUTOMOBILE
15 ASSIGNED RISK PLAN

16 PURSUANT TO STIPULATION, IT IS SO ORDERED.
17

18 Date: November 2, 2011

19 By: 
Honorable Maxine M. Chesney

20 United States District Judge
21 Northern District of California
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EXHIBIT "A"

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the United States District Court for
the Northern District of California on _____ [date] in the case of *Liberty Mutual
Insurance Co. vs The California Automobile Assigned Risk Plan*, USDC/Northern Dist. Of
California, Case No. C-11-1419-MMC. I agree to comply with and to be bound by all the terms
of this Stipulated Protective Order, and I understand and acknowledge that failure to comply
could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that
I will not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the provisions of this
Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] as my California
agent for service of process in connection with this action or any proceedings related to
enforcement of this Stipulated Protective Order.

Date: _____

Name: _____

Title: _____

Address: _____

Phone: _____